

AMENDED IN ASSEMBLY JULY 11, 2007

AMENDED IN ASSEMBLY JUNE 28, 2007

AMENDED IN SENATE APRIL 23, 2007

SENATE BILL

No. 133

Introduced by Senator Aanestad
(Coauthors: Senators Cogdill, Cox, and Wiggins)
(Coauthor: Assembly Member Berg)

January 24, 2007

An act to *amend Section 12404 of, and to add Article 8* (commencing with Section 12418) to Chapter 1 of Part 6 of, Division 2 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 133, as amended, Aanestad. Title insurance: title solicitors.

The Insurance Commissioner generally regulates insurance, including title insurance. *Violation of certain of these provisions is a misdemeanor.*

This bill would prohibit a person from marketing title insurance unless he or she holds a valid certificate of registration as a title marketing representative issued by the commissioner for a 5-year period. *Violation of these provisions would be a misdemeanor, pursuant to provisions of existing law.*

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

This bill would define "title marketing representative" and provide that this does not include a person whose primary duties directly involve the creation, production, or issuance of the title policy or the performance of escrow services.

This bill would provide that if a person markets title insurance without a valid certificate, as defined, the commissioner may issue a cease and desist order prohibiting that person from further marketing.

This bill would specify the information that the applicant for a certificate must supply in writing under penalty of perjury to the commissioner, ~~thereby creating a state-mandated local program.~~

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

This bill would provide a process and set a fee for certificate renewal.

This bill would provide that the department may revoke, suspend, restrict, or decline to issue a certificate of registration if it determines, after a hearing, that the title marketing representative has committed specified acts. The bill specifies other remedies available to the commissioner for misconduct.

The bill would require the commissioner to issue and adopt rules and regulations, as necessary, to administer the title marketing representative program and would provide that bill would not become effective until any regulations adopted are approved by the Office of Administrative Law.

The bill would make a technical change by deleting an obsolete statutory cross-reference.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12404 of the Insurance Code is amended
- 2 to read:
- 3 12404. (a) It is unlawful for any title insurer, underwritten
- 4 title company or controlled escrow company to pay, directly or
- 5 indirectly, any commission, compensation, or other consideration
- 6 to any person as an inducement for the placement or referral of
- 7 title business. Actual placement or referral of title business is not
- 8 a precondition to a violation of this section, whether the violation
- 9 is or is not a per se violation pursuant to subdivision (c).

1 (b) For purposes of this section, the following definitions are
2 applicable:

3 (1) “Person” means any individual or entity who is any owner
4 or prospective owner, lessee or prospective lessee of real property
5 or any interest therein, any obligee or prospective obligee of an
6 obligation secured or to be secured either in whole or in part by
7 real property or any interest therein, or any person who is acting
8 or who is in the business of acting as agent, representative, attorney,
9 or employee of those persons.

10 (2) “Title business” means the “business of title insurance” as
11 defined in Section 12340.3, and includes, but is not limited to, the
12 offering of title insurance, escrow, or other services by a title
13 insurer, underwritten title company, or controlled escrow company.

14 (3) “Compensating balance” is a balance maintained in a lending
15 institution by any title insurer, underwritten title company, or
16 controlled escrow company for the express or implied purpose of
17 influencing the extension of credit to a third party or the provision
18 of goods, services or benefits to a third party as an inducement for
19 the placement or referral of title business by a third party.

20 (c) The following activities, whether performed directly or
21 indirectly, are deemed per se inducements for the placement or
22 referral of title insurance business by any person and are unlawful:

23 (1) Paying or offering to pay, furnishing or offering to furnish,
24 or providing or offering to provide assistance with the business
25 expenses of any person, including, but not limited to, rent,
26 employee salaries, furniture, copiers, facsimile machines,
27 automobiles, telephone services or equipment, or computers.

28 (2) Providing or offering to provide any form of consideration
29 intended for the benefit of any person, including cash, below
30 market rate loans, automobile charges, or merchandise or
31 merchandise credits.

32 (3) Placing or offering to place on behalf of any person,
33 compensating balances.

34 (4) Advancing or paying or offering to advance or pay money
35 on behalf of any person into an escrow to facilitate the closing
36 thereof, other than any sum which represents the proceeds of a
37 loan made in the ordinary course of business ~~and in compliance~~
38 ~~with Section 1176~~; or an advance not to exceed 2 percent of the
39 sales price of the real property being sold or exchanged through
40 the escrow or the amount of any loan secured by real property

involved in the escrow, whichever is greater; or the extension of credit or an advance for the costs, fees and expenses of the escrow or of the title insurance issued or to be issued in connection therewith.

(5) Disbursing or offering to disburse on behalf of any person escrow funds held by a title insurer, underwritten title company or controlled escrow company before the conditions of the escrow applicable to that disbursement have been met, or in a manner which does not conform to Section 12413.1, including disbursing or offering to disburse before the expiration of the appropriate period established in Section 12413.1.

(6) Furnishing or offering to furnish all or any part of the time or productive effort of any employee of the title insurer, underwritten title company, or controlled escrow company to any person for any service unrelated to the title business.

(d) Reasonable expenditures for food, beverages, entertainment, educational programs, and promotional items constituting ordinary business expenses are deemed not to constitute an inducement for the placement or referral of title business, if the expenditures are correctly reported and properly substantiated as an ordinary and necessary business expense under provisions of the Internal Revenue Code and regulations issued thereunder, and the expenditures do not violate any other section of law, including, but not limited to, Section 10177.4 of the Business and Professions Code.

(e) The provision or payment of any form of consideration as an inducement for the placement or referral of title business not specifically set forth in this section shall not be presumed lawful merely because they are not specifically prohibited.

(f) The Insurance Commissioner may determine compliance and enforce the provisions of this section by written order, regulation or written consent which may take into consideration standards, conditions, guidelines, principles, or definitions utilized by other states or federal agencies but those standards, conditions, guidelines, principles, or definitions shall not be determinative.

(g) It is the intent of the Legislature that the enactment of this section shall have no effect on the applicability of other sections of the Insurance Code that are in existence prior to the enactment of this section and which specifically, or by implication, refer to this section. The Legislature hereby intends that this section,

1 including the specific terms employed within it, shall be liberally
2 construed for the purpose of protecting consumers of title business.

3 **SECTION 1.**

4 *SEC. 2.* Article 8 (commencing with Section 12418) is added
5 to Chapter 1 of Part 6 of Division 2 of the Insurance Code, to read:

6
7 Article 8. Title Insurance Representatives
8

9 12418. (a) No person shall market title insurance in this state
10 unless the person holds a valid “certificate of registration” as a
11 title marketing representative issued by the commissioner pursuant
12 to Section 12418.1.

13 (b) For purposes of this article, “title marketing representative”
14 means a natural person employed by a title insurer, underwritten
15 title company, or controlled escrow company whose primary duty
16 is to market title insurance as defined in Section 12340.1 and
17 receives compensation through bonuses or commission based on
18 the percentage *or amount* of title insurance policies or escrow
19 services sold through his or her marketing efforts. A title marketing
20 representative does not include a person whose primary duties
21 directly involve the creation, production, or issuance of the title
22 policy or the performance of escrow services.

23 (c) If any person knowingly markets title insurance without
24 having applied for or obtained a certificate of registration pursuant
25 to Section 12418.1, the commissioner may issue a cease and desist
26 order pursuant to Section 12921.8.

27 12418.1. (a) A certificate of registration as a title marketing
28 representative shall be applied for and renewed by filing with the
29 commissioner a written application. The application shall be on a
30 form prescribed by the commissioner, and shall prescribe the
31 disclosure of information that will aid the commissioner in
32 determining whether the prerequisites for the certificate have been
33 met. The applicant shall certify that the contents of the application
34 are true and correct under penalty of perjury.

35 (b) Each application for a certificate of registration shall contain
36 the following information:

37 (1) The residence address, the principal business address, and
38 the mailing address of the applicant.

39 (2) A statement, signed by an officer of the business by whom
40 the applicant is or will be employed, certifying that the applicant

1 will be provided training regarding Article 6 (commencing with
2 Section 12404) within six months of the hiring date or date of
3 application.

4 (c) Each application to obtain or renew a certificate of
5 registration shall be accompanied by a filing fee ~~in an amount~~
6 ~~determined by the department to be sufficient to defray the~~
7 ~~department's actual cost of processing the application or renewal~~
8 ~~of _____ dollars (\$_____).~~ An application shall not be deemed filed
9 unless it has been delivered to the department accompanied by the
10 proper filing fee.

11 (d) The commissioner may decline to act on an incomplete or
12 defective application until an amended application that completes
13 the prescribed form has been filed with the department. In the
14 event that the application is found to be defective or incomplete,
15 the department shall notify the applicant and his or her employer
16 in writing that the application needs to be modified and resubmitted
17 within 15 days of receipt of this written notification.

18 (e) An applicant submitting an application filed with the
19 department for a certificate of registration as a title marketing
20 representative may solicit, sell, or market title insurance, as defined
21 in Section 12340.1, in the interim time period preceding the formal
22 approval or rejection of the application.

23 12418.2. (a) An applicant or holder of a certificate of
24 registration as a title marketing representative is not required to
25 pass a qualifying examination, and is exempt from prelicensing
26 and continuing education requirements, except as specified in
27 paragraph (2) of subdivision (b) of Section 12418.1.

28 (b) Upon the filing of an application for the issuance or renewal
29 of a certificate of registration, the commissioner may conduct an
30 investigation to determine if the applicant shall be granted the
31 certificate of registration by virtue of prior conduct in the marketing
32 of policies of title insurance and to verify the accuracy of the
33 information submitted by the applicant to the Department of
34 Insurance and may require the filing of any supplementary
35 documents, affidavits, and statements that may be necessary to
36 determine whether training specified in paragraph (2) of
37 subdivision (b) of Section 12418.1 has been, or will be, provided
38 to the applicant within the time period set forth in Section 12418.1.
39 Should the commissioner decline to approve the granting of a

1 certificate of registration, the procedure set forth in subdivision
2 (c) of Section 12418.4 shall apply.

3 12418.3. (a) Each certificate of registration issued under this
4 ~~chapter article~~ shall be for a five-year period beginning on the date
5 the certificate is issued.

6 (b) Not less than 60 days before a certificate of registration will
7 expire, the commissioner shall mail an application to renew the
8 certificate to the last known address appearing on the registrant's
9 records. It shall be the responsibility of the registrant to renew his
10 or her certificate, whether or not a renewal notice is received.

11 (c) The application for renewal of an expired certificate of
12 registration may be filed after the expiration date and until the
13 same month and day of the next succeeding year. In addition to
14 the fee for a renewal application, a delinquent application fee in
15 the amount of fifty dollars (\$50) shall be assessed for each
16 application for renewal filed after the expiration date. Each
17 registrant shall be subject to payment of delinquent application
18 fees under this subdivision. The commissioner may waive the
19 delinquent application fee, or accept a renewal filed after the date
20 specified in this subdivision, if the registrant's failure to comply
21 is due to clerical or other inadvertent error on the part of the
22 department.

23 12418.4. (a) The provisions set forth in Sections 1668, 1669,
24 1670, 1738, 1738.5, 1743, and in Article 6 (commencing with
25 Section 12404), shall apply to all applicants or holders of a
26 certificate of registration issued pursuant to this article.

27 (b) The department may revoke, suspend, restrict, or decline to
28 issue a certificate of registration if it determines that the title
29 marketing representative has violated provisions of Article 6
30 (commencing with Section 12404) pursuant to the due process and
31 hearing requirements set forth in subdivision (c).

32 (c) Except as provided in Section 1669, a certificate of
33 registration shall not fail to be issued, denied, restricted, suspended,
34 or revoked without a hearing conducted in accordance with Chapter
35 5 (commencing with Section 11500) of Part 1 of Division 3 of
36 Title 2 of the Government Code.

37 ~~(d) Any costs associated with an enforcement action or~~
38 ~~investigation that results in a certificate of registration being~~
39 ~~restricted, suspended, or revoked shall be paid for by the holder~~
40 ~~of a certificate of registration issued pursuant to this article.~~

1 (e)

2 (d) In addition to, or in lieu of, any other penalty that may be
3 imposed under this article against a title marketing representative,
4 the commissioner may bring an action against a title marketing
5 representative for any violation of the provisions of Article 6
6 (commencing with Section 12404). If a title marketing
7 representative charged with a violation of Article 6 (commencing
8 with Section 12404) is determined by the commissioner to have
9 committed the violation, the commissioner may ~~request~~ *require*
10 the surrender of, temporarily suspend or revoke either permanently
11 or temporarily the title marketing representative's certificate of
12 registration, and, in addition, may impose a monetary penalty. Any
13 payment of a monetary penalty pursuant to a settlement or final
14 adjudication shall be made from the title marketing representative's
15 personal funds and not by his or her employer either directly or
16 through the title marketing representative. This article shall not
17 preclude an action against a company that had actual knowledge
18 of the violation by the title marketing representative.

19 12418.5. (a) The commissioner shall issue rules and
20 regulations, as necessary, to administer the program established
21 by this article.

22 (b) The commissioner shall adopt regulations to define
23 reasonable expenditures for title marketing representatives pursuant
24 to subdivision (d) of Section 12404.

25 12418.6. ~~This article shall not take effect until~~ *The registration*
26 *and enforcement provisions of this article shall become operative*
27 *on the date that* the regulations adopted pursuant to subdivision
28 (b) of Section 12418.5 have been approved by the Office of
29 Administrative Law.

30 ~~SEC. 2.~~

31 *SEC. 3.* No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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